IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLIATION NO.120 OF 1998

Shankar Ramchandra Mahamedapure
Chief Officer, Kurundwad Municipal
Council, Kurundwad, Dist:Kolhapur. ... Applicant
(Accused)

V/s.

1.Vithal Nivruti Ghorpade
R/o:Kurundwad, Tal:Shirol,
Dist: Kolhapur.

2. State of Maharashtra ... Respondent
(Res.No.1/Orig.compl.)

Shri.N.D. Hombalkar for Applicant.
Ms.P.H. Kantharia APP for State.

CORAM : V.M. KANADE, J.
DATED : 22/12/2006

ORAL JUDGMENT:-

1. Heard learned counsel for the applicant and learned APP for the State. None appears for respondent No.1/original complainant though served.

2. By this criminal revision application, applicant is challenging the order of issuance of process passed by the JMFC Magistrate, Kurundwad.

3. Brief facts which are relevant for the purpose of deciding this application are as under:-

The applicant was working as a Chief Officer, Kurundwad Municipal Council, Kurundwad. On 12/03/1998, applicant issued notice to respondent No.1 U/s.52 and 53 of the Maharashtra Regional Town Planning Act, 1966, asking respondent No.1 to remove certain constructions which he had illegally constructed without permission of the Council. After receipt of said notice, respondent No.1 filed criminal case No.137/1998 against the applicant in the court of Judicial Magistrate, Kurundwad U/s.504, 506, 427 of IPC, in which he alleged that said notice had been issued by the applicant in collusion with another person namely Prakash Suryavanshi in order to harass him. Learned Magistrate issued process against the applicant U/s.504, 506, 427 of IPC.

4. Learned counsel for the applicant has filed additional affidavit of one Bajarang Dhere who is working as a Clerk for the Municipal Corporation. He has stated that the applicant who was working as Chief Officer, has now retired and is no longer in service and that notice had been issued by the applicant in his capacity as a

Chief Officer for the Council.

5. I have perused the complaint which is filed by the respondent No.1 as also notice which was issued by the present applicant in his capacity as a Chief Officer for the Council. It is apparent that said complaint has been filed by the respondent No.1 merely because the applicant had issued show cause notice while he was acting as a Chief Officer for the Council. No case U/s.504, 506, 427 of IPC is even prima facie made out from the averment made in the complaint. This is clear-cut case of non-application of mind on the part of JMFC while issuing process. In my view, therefore, this is a fit case for quashing and setting aside the process which is issued by the JMFC, Kurundwad.

6. Criminal revision application is, accordingly allowed in terms of prayer clause (a). Criminal revision application is allowed in the above terms.

V.M. KANADE J.